

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2001-646

December 21, 2001

NORTHERN UTILITIES, INC.,  
Petition for Approval to Participate  
In Funds Pooling Agreement

ORDER

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WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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**I. SUMMARY**

We find that Northern Utilities, Inc.'s proposed Money Pool Agreement with its affiliates is not adverse to the public interest and approve it subject to the conditions noted below.

**II. BACKGROUND**

On September 17, 2001, Northern Utilities, Inc. (NU or the Company), in accordance with the requirements of 35-A M.R.S.A. §707, requested Commission approval to participate in a "Money Pool Agreement" administered by NiSource Corporate Service Company (NCSC) with a number of its affiliates. The Company also requested a waiver from Chapter 820 § 4E of the Commission's rules in order for NCSC to charge NU for the use of NCSC's treasury department employees at a rate that may prove to be below market value. This agreement will supercede a similar borrowing arrangement originally approved by the Commission on September 16, 1996 in Docket No. 96-377, *Northern Utilities Inc., Petition for Approval to Participate in a Funds Pooling Agreement*, and later amended by Commission Order in Docket No. 2001-108, *Northern Utilities Inc., Petition for Approval to Participate in a Funds Pooling Agreement*, on March 20, 2001.

Northern states that it expects the proposed money pooling agreement to reduce administrative expenses associated with its short-term borrowing program by sharing them among affiliates. In addition, NU stated in its petition that interest expenses on short-term debt should also be less than the interest expenses it would incur on a stand-alone basis and would not exceed interest expenses under the existing funds pooling agreement.

**III. DISCUSSION**

In March 2001, NU entered into an arrangement with an indirect corporate parent company, NiSource, Inc., in which its short-term borrowing requirements and short-term

cash investments would be made through NiSource Capital Markets (NCM).<sup>1</sup> That agreement allowed NU to have an individual borrowing limit of \$50 million and a corporate-wide short-term borrowing limit of roughly \$3.4 billion. At the time the Commission approved NU's request, the Company expected that this arrangement would have saved it roughly \$58,000 in annual interest expenses compared to what it would have expected to pay on a stand-alone basis based on its previous 12-month short-term borrowing history. In the proposed agreement NU indicates that it expects to continue to realize interest savings of this magnitude (assuming a similar borrowing experience in the future), and it also estimates that it can save on credit line fees and can earn higher returns on surplus cash due to economies of scale with a larger funds pool. This would lower the overall "all-in" cost of short-term borrowing for NU.

The proposed agreement, which participants can terminate at any time without penalty, will leave NU's current borrowing limit at \$50 million and the corporate-wide short-term borrowing limit at \$3.4 billion and opens the money pool to between 40 and 50 regulated and unregulated NiSource subsidiaries. The operations of the pool will also parallel those of the existing pool. For instance, NCSC will not charge a direct management fee to any participant, nor will it "mark-up" the direct fees associated with any specific transaction. Fees paid to banks to maintain the availability of credit lines will be charged on a pro-rata basis on the basis of individual borrowing limits of each participating NiSource subsidiary. This is customary in the banking industry, and when NU shared credit lines with Bay State in the original money pool, NU paid 12.5 basis points on its unused credit line availability.

As for the expenses NCSC will incur in the operation of a treasury department supporting NU, the Company proposes that it be allowed to pay NCSC directly under the terms of a management service agreement that it will file with the Commission in the near future. For a reference point, the Company's filing stated that consolidation of the treasury operations at the NCSC level has saved the combined Bay State/NU entity \$100,000 annually in payroll expenses. We expect that a portion of these types of savings will accrue to NU through lower future expenses flowing through the new management service agreement.

#### **IV. DECISION**

Having examined the proposed agreement, we find that it is not adverse to the public interest and approve it subject to the conditions noted below. We also grant the waiver request with regard to Chapter 820 § 4E of the Commission's rules.

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<sup>1</sup> NU affiliates Bay State Gas Company (Bay State) and Granite State Gas Transmission, Inc. (Granite State) also entered into this agreement. NU's cash actually moves through Bay State because a Commission approved affiliate services contract does not exist between NU and NCM.

A. Affiliate Risk

In comments filed by the Office of the Public Advocate (OPA) on December 4, 2001, the OPA expressed the concern that NU's proposed short-term borrowing relationship would be open to unregulated, presumably more risky, NiSource affiliates. The OPA notes that such affiliates will be able to borrow from the pool at the same rate as less risky affiliates, and therefore, there is a subsidy in favor of the more risky affiliates. This is not an unreasonable concern. However, it does not rise to the level where the OPA has asked us to deny the Company's request. OPA has instead recommended several reporting requirements to allow us to monitor the operation of the pool and risks to Northern.

We also would not be inclined to deny the request on this basis for two reasons. First, a certain amount of risk differentiation is unavoidable in any money pool arrangement even if the all of the pool participants are regulated utilities because all regulated utilities do not have identical risk profiles. Second, a company the size of a stand-alone NU would probably earn less on invested cash balances than would a company the size of NiSource. Larger cash balances tend to earn higher returns and consumers typically see this when investing in bank CDs where higher balances earn higher rates of return.

B. Reporting Requirements

The OPA has proposed several annual reporting requirements to evaluate whether NU's participation in the money pool is beneficial to ratepayers, and we agree that some level of reporting is appropriate. Based on the Company's response to Examiner's Data Request 01-01, NU will be acquiring a treasury reporting software package that we assume will simplify the production of the reports we will require. We will require that NU file the following on an annual basis:

1. NU's average monthly outstanding loan balance for all 12 months of the calendar year;
2. NU's average monthly outstanding investment balance for all 12 months of the calendar year;
3. NU's short-term interest expense accrued for each month of the calendar year;
4. NU's interest income accrued for each month of the calendar year;
5. Total fees assessed to NU each month of the calendar year.

This essentially adopts all of the reporting requirements that the OPA recommended except for one. We do not feel that it is necessary for the Company to

track what it *might have paid/earned* if it were not a pool participant. First, we do not believe that the Company or Bay State will track that information once the money pool becomes operational. Second, if any party or the Commission wished to do so, it would be possible to use the reports that NU will be providing and to insert alternate interest rate assumptions to gauge how the pool is performing.

With regard to the participation of subsidiaries with different risk profiles in the pool, we recognize one other potential concern: the risk of loss of the cash balances that NU invests in the pool. We view this as a minor concern both because of the size of NiSource and the fact that NU's history in its existing money pool agreement has been that it is a net borrower from the pool rather than a net lender. While this could change in the future, we cannot assign any level of probability to that occurrence.

For now, we will require that NU (or NCSC) report to the Commission, in writing, any event of default by a money pool participant with regard to the pool or of any other internal or external debt instrument within 5 business days of the event. When reporting any such event, NU (or NCSC) should fully explain why there was a default and what possible effect the event will have on the pool and the other participants. This will allow us to consider whether or not NU might be subject to any undue risk by continuing to participate in the pool.

Furthermore, we note that Section 3.2 of the Agreement, entitled "Legal Responsibility," states that the rights, obligations, and liabilities of the parties under the Agreement "are several in accordance with their respective obligations, and not joint." We read this to mean that Northern will be held harmless from the default of other affiliates participating in the money pool. We condition our approval of Northern's participation in the pool on this interpretation.

#### C. Management Service Contract

Another significant issue that must be addressed in order for us to approve the Company's request is the lack of an approved management service contract directly between NCSC and NU. Without an approved agreement between affiliates, NCSC is legally prohibited from charging NU for the fixed operating costs, payroll and overheads associated with NU's usage of NCSC's treasury department.

There are several ways to deal with this problem. The first option is to prohibit NU's participation in the money pool until such time as a management service agreement can be filed and approved.<sup>2</sup> We do not find this option to be desirable because NU would not be able to realize any benefits of the arrangement during the time such a proceeding is under review, up to 120 days.

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<sup>2</sup> In the Company's November 29, 2001 response to our Procedural Order dated November 20, the Company indicates that it will file a service agreement for Commission approval "in the near future."

A second option is that NCSC could agree to forego any charges for the fixed operating costs (including payroll and overheads) of NCSC's treasury department that would be covered by a future management service agreement until such time that a management service agreement is approved.<sup>3</sup> Another possibility is that NCSC and NU could defer any such charges that accrue between the time that NU starts participating in the pool and the approval date of a management service contract, with the possibility of requesting recovery at a later time.

We will leave it to the Company to decide whether it is worth the effort to defer any such charges or if it will choose to forego them during the interim period. The Company should state its intention at the time it files the appropriate management service agreement pertaining to the money pooling agreement.

D. Chapter 820 § 4E

The Company has also requested a waiver from Chapter 820 § 4E of the Commission's rules in the event that the NCSC's charges to NU for treasury department, or for any other, expenses incurred on behalf of NU as a money pool participant, are below fair market value. We find the Company's waiver request to be appropriate here. It is our opinion that a cash management function is a necessity in every line of business and it is therefore appropriate for NU to use this service if it is provided at a reasonable cost. The provider may be an affiliate so long as the arrangement is not adverse to the public interest. 35-A M.R.S.A. § 707. This determination is often made on the basis of whether the terms of the arrangement, including cost, are comparable or more beneficial than those that can be obtained in the market. This arrangement results in savings to Northern and is precisely the type of cost-saving synergy (or "merger benefit") that NU *should* be able to enjoy on behalf of its ratepayers.

E. Credit Ratings

We note one final item in this Order. In our March 20, 2001 Order in Docket No. 2001-108 (NU's existing money pool agreement) at page 2, we observed that NU's ratepayers could be harmed by the money pooling agreement due to the fact that NiSource's credit ratings were lower than Bay State's after the completion of the NiSource/Columbia merger, and, that Bay State's credit ratings were lowered to match NiSource's new post-merger ratings. According to the Company's response to OPA Data Request 01-01, Bay State continues to have a slightly better short-term debt rating than NiSource, meaning that it is at least *possible* that NU's short-term borrowing costs could be higher from participating in this money pool than one that did not include NiSource.<sup>4</sup>

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<sup>3</sup> Again, such a proceeding could take up to 120 days from the filing date.

<sup>4</sup> Bay State's short-term ratings are A-2 from S&P and P-1 from Moody's while NiSource's are A-2 and P-2 respectively.

While we consider this to be unlikely given the small difference in ratings and that we continue to believe that economies of scale realized by the pooling of funds should generate savings for NU, we reiterate that the Company will have the burden of proof in showing that higher borrowing rates resulting from credit rating downgrades were not caused by the merger if it seeks to recover these higher costs in the future. Also, our approval of the current request is subject to the usual condition that it does not in any way limit the ability of the Commission to set the rates or charges of the Company in a future rate proceeding.

## V. CONCLUSION

With the conditions noted above, we conclude that the proposed money pooling agreement is not adverse to the public interest and approve NU's request.

Accordingly, we

## O R D E R

1. That Northern Utilities may participate in the Money Pooling Agreement administered by NiSource Corporate Service Company as requested subject to the conditions noted in the body of this Order.
2. That Northern Utilities file an executed copy of the amended funds pooling agreement within 30 days of closing of the transaction.

Dated at Augusta, Maine, this 21<sup>st</sup> day of December, 2001.

## BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: Welch  
Nugent  
Diamond

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.